(Testimony of Henry Eugene Berman.)

insure the shipping company receiving their required inspection certificates.

Q. Was this book kept in the regular course of your business from the time you mentioned, or the time indicated in the book to the time when the last record was made in the book?

A. That's right.

Q. When does the book begin?

A. February 2. It does not show the year but I would say it was 1944.

Q. When does the book end?

A. That I will have to see. Apparently this book ends as far as War Shipping is concerned on May 22, 1945.

Q. At the time you filled the order for the John Muir on May 24, 1944, was it your intention at the time to make an entry in that book?

A. Oh, yes, definitely.

Q. Can you find out where the order which you made the record of, the delivery to the John Muir on May 24, 1944, or about that time——

A. I can look.

Q. I beg your pardon?

A. Yes, it is April. April 24.

Q. April 24. Do you find such a record for the John Muir on that date? A. I do.

Q. Was that record made in the regular course of your business? A. Yes, it was.

Mr. Pratt: May I see the book, please?

Mr. Sullivan: Why certainly. [3296]

(Testimony of Henry Eugene Berman.)

Mr. Faulkner: In the interests of time we will offer the pages from the 13th of April to the 15th of May and then maybe an isolated page covering one ship. Do anything you want with the book, but the only relevant entries in the book are those between those dates. Don't you think that is better, Mr. Pratt?

Mr. Pratt: I do not know whether there is any objection.

Mr. Faulkner: We are going to show it to the Jury, and if we hand sixty pages to the Jury they will thumb through them. The other way there will be just the limited relevant pages. We want to do it in a form by which you will have complete access to the book, and if you want to introduce any pages, you may. That is a suggestion in the interests of time, your Honor.

Mr. Pratt: I have no objection to such parts of the book being offered. Of course, I could not object, as far as that is concerned, to such portions of the book as the defense want to offer. But I want to have the book available so perhaps the Government may offer the rest of it.

Mr. Faulkner: That is what we have in mind.

Mr. Pratt: I do not think the pages should be taken out.

Mr. Faulkner: Oh, no, we do not intend to take them out.

The Court: Proceed, gentlemen.

Mr. Sullivan: Q. Mr. Berman, will you find that entry for the John Muir?

(Testimony of Henry Eugene Berman.)

A. I have it here at hand. [3297]

Mr. Faulkner: Take all the pages, Mr. Sullivan, I may suggest, concerning the John Muir, up to the 15th of May. There are a lot of other ships there, Mr. Pratt, but they are going to be on the pages anyway.

Mr. Pratt: I think a description of the line on the various pages where certain entries appear would be sufficient. Perhaps you may number the pages, but I do not like to have other marks on the book except the page number.

Mr. Faulkner: We are not going to mark anything.

Mr. Sullivan: Q. Are there any page numbers on that book, Mr. Berman?

A. No, there are not.

Q. Will you put the number 1 on the page where you find the entry of the John Muir?

A. Not on the first page?

Mr. Pratt: No, number all the pages.

Mr. Faulkner: You mean number from the very beginning?

Mr. Pratt: From the beginning to the end.

Mr. Faulkner: We can do that during the recess.

Mr. Pratt: That is all right. I do not care to have it done now as long as it is done in that manner.

The Witness: I am up to the John Muir now. I have numbered ten pages, which takes us up to

(Testimony of Henry Eugene Berman.)

May 23, 1944. There is a whole other year's work in here.

Mr. Pratt: That ought to be enough, I think, for the present.

Mr. Sullivan: Q. On what page do you find the entry for [3298] the John Muir, Mr. Berman?

A. On the fourth line of Page 8.

Q. Do you find an entry for the Cape Pillar for April 25, 1944? A. No, I do not.

Q. Do you find an entry for the Josiah Royce for April 25, 1944? A. Yes, I do.

Q. On what page and line does that appear?

A. Line 5, Page 8.

Q. Do you find an entry for the Cape Charles on April 29? A. Yes, I do.

Q. What page and line, please?

A. Fourth line from the bottom on Page 8.

Q. Do you find an entry for the Gilbert Hitchcock on May 1, 1944?

A. Yes, on the top line of page 9.

Q. Do you find an entry for the Henry White on May 1, 1944?

A. On the second line from the bottom on page 8.

Q. Do you find an entry for the Czechoslovakia Victory on May 3, 1944?

A. On the fourth line of Page 9.

Q. Do you find an entry for the Phillipa on May 3, 1944?

A. I would have no entry in here for the Phillipa. That had nothing to do with City Sales.

(Testimony of Henry Eugene Berman.)

Q. I beg your pardon. Do you find an entry for the Edmund Ross on May 5, 1944?

A. On Line 6 of Page 9.

Q. Do you find an entry for the William A. Coulter on May 8, 1944?

A. On Line 8 of page 9. [3299]

Q. Do you find an entry for the Francis Parker on May 8, 1944? A. On Line 10 of Page 9.

Q. Do you find an entry for the Cape Cumberland, or was that one of your boats?

A. The Cape Cumberland was not one of my boats.

Q. Do you find an entry there of May 10?

A. It wouldn't be here.

Q. Do you find an entry for the Cape Breton on May 10?

A. That would not be here either.

Q. Do you find an entry for the Mission San Diego on May 10? A. No.

Q. Do you find an entry for the Heber Creel on May 12? A. On Line 13, Page 9.

Q. Do you find an entry for the James Oliver on May 23? A. Yes, on Line 2 of Page 10.

Q. Were each and all of the entries which you have just testified to made by you in the manner you have described? A. Yes, they were.

Q. Were each and all of those entries made by you in the regular course of business?

A. Yes, they were.

Q. Were each and all of the entries made at the time purportedly indicated in the record there?

(Testimony of Henry Eugene Berman.)

A. Yes, they were.

Q. Going back to the first ship, do you find a signature there of any agent of the Department of Agriculture with respect to the steamship John Muir? A. Yes, I do. [3300]

Q. And what do you read there?

The Court: Q. You made an entry there?

The Witness: A. I did not. He asked me if I recognized the signature of the agent of the Department of Agriculture.

The Court: Q. How did he get his signature in there?

A. He put it in here from time to time.

Q. I thought you kept this book?

A. I did keep this book.

The Court: I am just trying to clear the matter up so the Jury will follow it.

Mr. Faulkner: Your Honor, the witness kept the book and the Department of Agriculture agent initialed every item in the book.

The Court: That ought to be developed in some manner so the Jury will follow it.

Mr. Sullivan: Q. Did a representative of the Department of Agriculture initial each one of the ships that you have testified to in each instance there?

A. Yes, he did, either singly or severally.

Q. When you say severally, what do you mean?

A. Well, they had a peculiar way of making an initial. If they were copying three pages at the same time, they would put their initial on the top

(Testimony of Henry Eugene Berman.)

line and then draw a zigzag line to the end of the point where they took their information to denote that that initial comprised the information taken from those three pages.

Mr. Pratt: If the Court please, I think the best evidence [330] on that is the testimony of the men who put it there, as to how the initials were made and what they indicated. I do not know whether this witness was even present when these marks were made.

Mr. Sullivan: Q. Mr. Berman, were you ever present on any occasion when these marks were made? A. On most occasions.

Mr. Sullivan: I offer the respective pages of the book, if the Court please, which were identified by the witness on his examination as containing the entries for the various ships that he testified to in evidence, and ask that those pages be marked as one exhibit in evidence under one number for the defendants.

Mr. Faulkner: And then we may have the book marked for identification, Mr. Pratt?

Mr. Pratt: Very well.

The Court: So admitted. It may be admitted and marked.

(The book was thereupon marked Defendants' CX for Identification, and the pages referred to therein were marked CX-1.)

Mr. Pratt: If the Court please, the answer the witness gave in connection with the activities of the Department of Agriculture inspectors as to the

(Testimony of Henry Eugene Berman.)

manner in which they did this marking, I ask that that be stricken.

The Court: Let it go out and let the Jury disregard it.

Mr. Faulkner: If the Court please, he is explaining an [3302] obvious thing on the book which a witness is permitted to do.

The Court: The foundation has not been laid. He was not there all the time.

Mr. Faulkner: Excuse me, your Honor.

The Court: If I am in error I will stand corrected, If you wish to read the testimony, you may.

Mr. Faulkner: If we show it to Mr. Pratt we might clear it up.

Mr. Sullivan: Q. Mr. Berman, I will hand you this Exhibit in evidence, CX——

Mr. Faulkner: Mr. Pratt, in the inspection of that particular book, your Honor, we would like to do it in a manner where the Jury would have that book before them and also have these egg-grading certificates. These were all received in evidence, and the egg-grading certificates here that refers to the Cape Chalmers was received in evidence with an understanding between Counsel for the Government and myself that it would be subject to correction whether the Cape Chalmers was in reality the Cape Charles.

Mr. Pratt: And we said it was not.

Mr. Faulkner: You said it was not. Now I think that you will find that on the 29th of April in that book they inspected for the Cape Charles, and I

(Testimony of Henry Eugene Berman.)

think that the record further will show that on a period back of that they had issued a certificate for the Cape Chalmers, which was not in [3303] this amount, but I think that that record shows the Cape Charles was described as a shipment on April 29 of thirty-six cases.

Mr. Pratt: Doesn't it also show that eggs were supplied to the Cape Chalmers?

Mr. Faulkner: Yes, but that is a different shipment.

Mr. Pratt: That is a different boat; it is not the same boat.

The Court: Well, it is time for adjournment. You can take that up during the recess.

Mr. Faulkner: We will straighten that out before ten o'clock.

The Court: Before ten o'clock tomorrow morning. The jurors may be excused. Keep in mind the admonition of the Court and return at ten o'clock tomorow morning.

(Thereupon an adjournment was taken until Friday, March 22, 1946, at 10:00 o'clock a.m.)

Friday, March 22, 1946, 10:00 o'clock a.m.

The Clerk: United States v. Nye & Nissen.

Mr. Faulkner: If your Honor please, at the time of the admission in evidence of certain egg grading certificates there was one which I offered in evidence and inadvertently referred to as Exhibit U. The fact is it it was marked Exhibit V—no reffec-

tion on Mr. Welsh's writing—which related to the Cape Charles, and the question arose whether it was the Cape Charles or the Cape Chalmers, and I said that it would be subject to correction whether this certificate related really to the Cape Charles or Cape Chalmers. We went through certain data last night and it is agreeable to counsel for the Government that the name Cape Chalmers is incorrect in there, and it should be Cape Charles.

Mr. Pratt: Yes. This is, however, subject to a possible correction.

Mr. Faulkner: That is understood by either side. May it be marked Defendants' V?

The Court: It may be admitted and marked.

(The document was marked Defendants' Exhibit V in evidence.)

HENRY EUGENE BERMAN,

recalled;

Direct Examination (resumed)

Mr. Sullivan: Q. Mr. Berman, I hand you a book that you [3305] identified from the stand yesterday, and which the entire book is marked Defendants' Exhibit CX for Identification, and the first ten pages of the book were marked CX-1 in evidence. Mr. Berman, that is the book that we indicated yesterday? A. This is it.

Q. I will also hand you, Mr. Berman, Defendants' Exhibit AA in evidence, which is an egg grading certificate of the United States Department of Agriculture, covering an inspection of the steamship John Muir, an inspection for the steamship John

(Testimony of Henry Eugene Berman.)

Muir, and I will ask you to examine that. Have you examined that? A. Yes, I have.

Q. Mr. Berman, do you find an entry for the steamship John Muir with relation to eggs sold to the John Muir in your book on or about April 21, 1944?

A. I find one for April 24, 1944.

Q. For the John Muir?

A. Yes, order No. 4088.

Q. Will you please read that entry, with relation to eggs covered in the entry?

A. "48 cases of Medium Processed Grade AA."

Q. Will you read the entire line—so that we may have it all.

A. "4/24, Alaska Packers—48 Medium Processed AA 1200-AA-SS—John Muir." Above the name of the ship and the numerals "4088."

Q. Are you familiar with the initials of the various Department of Agriculture inspectors who were in your plant inspecting during the months of April and May, 1944? A. Yes, I am.

Q. Do you recognize in connection with that entry the initials [3305] of any of those inspectors?

A. Yes, I do.

Q. What initials do you recognize?

A. G. C. R.

Q. Whose initials are those?

A. Gordon Reed.

Q. Who is Gordon Reed?

A. Gordon Reed was one of the inspectors for the Department of Agriculture.

(Testimony of Henry Eugene Berman.)

Q. I don't find a Defendants' Exhibit, Mr. Berman, to show you, an egg grading certificate, in connection with the Cape Pillar, but I will ask you if you will refer to your book and tell me if you find an entry in the book for the steamship Cape Pillar on or about April 25, 1944?

A. No, the book has no entry for the Cape Pillar, either.

Q. Have you an explanation as to how the Cape Pillar happens not to be in there?

A. Just must have forgotten to put it in.

Q. Do you find——

Mr. Pratt: I did not get that.

Mr. Sullivan: He just must have forgotten to not put it in.

Mr. Hippeli: "To put it in."

The Witness: Forgot to put it in.

Mr. Sullivan: Q. Mr. Berman, I show you Defendants' Exhibit AU in evidence, purporting to be an egg grading certificate dated April 25, 1944, covering a shipment of eggs to the steamship Josiah Royce. I ask you to look at that document. Have you examined that document I just handed you?

A. Yes.

Q. Do you find in your book which is Defendants' Exhibit CX for Identification and the pages thereof, which are Defendants' Exhibit CX-1 in evidence, an entry on or about April 25, 1944, with relation to the steamship Josiah Royce?

A. Yes, there is one here.

Q. Will you please read the entry?

(Testimony of Henry Eugene Berman.)

A. "4/25. General-60 Medium Processed AA." Above that, "1200-AA-SS, Josiah Royce." Above that the numerals "17."

Q. Do you find any entry of initials near that entry? A. Yes, the same.

Q. What initials? A. "G. C. R."

Q. Whose initials are those?

A. Gordon Reed.

Q. Gordon Reed is the same Gordon Reed that you mentioned a little while ago, who was an inspector for the Department of Agriculture?

A. The same.

Mr. Sullivan: Will your Honor indulge me just a moment, Mr. Faulkner has called something to my attention.

Q. Now, I will call your attention again to Defendants' AU in evidence, which is an egg-grading certificate covering the steamship Josiah Royce, and ask you if you note thereon the size of the eggs that were delivered, or that were inspected on that certificate?

A. Yes. This certificate calls for U. S. Grade AA eggs, Mediums.

Q. What is the size of eggs recorded in your book there? [3307] A. Medium.

Q. After you made the entry of "Medium" in the book, was there any exchange made of these eggs?

A. Yes. That was the boat we have talked about in court, I believe it was the next day those eggs were taken back on the boat and Large eggs were exchanged for those eggs.

(Testimony of Henry Eugene Berman.)

Q. Mr. Berman, I will hand you Defendants' Exhibit U in evidence, or maybe it is V in evidence—V in evidence, purporting to be an egg grading certificate dated April 29, 1944, covering 36 cases of U. S. Grade AA Medium eggs for the steamship Cape Chalmers. Will you look at that? You heard in court here before we resumed your testimony the statement made by Mr. Faulkner and Mr. Pratt that subject to correction this is really the certificate covering a shipment to the Cape Charles?

A. Yes.

Q. I will ask you, then, to look in your book, which is Defendants' CX for Identification, and the pages thereof which are Defendants' CX-1 in evidence, and tell me if you find an entry on or about April 29, 1944, covering a shipment of eggs to the Cape Charles? A. Yes, I do.

Q. Will you read that entry?

A. "4/29. Inter-Ocean—36 Medium Processed AA." Above that "600 AA—Cape Charles." Above that the numerals "60."

Q. Do you find a signature of a representative, or the initials of any representative of the Department of Agriculture? [3308]

A. Yes, "G. C. R."

Q. Who is "G. C. R."?

A. Gordon C. Reed.

Q. That is the same Gordon C. Reed we have talked about? A. Exact same.

Q. You made mention there about numbers "three six." What do you mean by "three six"?

(Testimony of Henry Eugene Berman.)

A. Thirty-six.

Q. I am not able to show you at this time, Mr. Berman, an egg grading certificate produced by the Government for the Henry White, but I will ask you, nevertheless, to look in Defendants' Exhibit CX-1 in evidence and tell me if you find a record there for a shipment of eggs, 50 cases of eggs to the Henry White on or about May 1, 1944?

A. Yes, I do.

Q. Will you read that, please?

A. "5/1 De La Rama—50 Medium Processed AA." Above that, "1200 AA—Henry White." Above that the order number, "3601."

Q. Do you find any inspector's initials?

A. Yes, "G. C. R."

Q. Who was G. C. R.?

A. Gordon Reed.

Q. Mr. Berman, I will show you Defendants' AQ in evidence, which purports to be an egg grading certificate of the United States Department of Agriculture covering 25 cases of U. S. Grade AA Medium eggs for the steamship Czechoslovakia Victory, and ask you to examine that. Have you examined that? A. Yes, I have.

Q. Will you look in your book that you have there and in the pages which are Defendants' CX-1 in evidence, and tell me [3309] if you find in there a record of any delivery to the Czechoslovakia Victory on or about May 3, 1944?

A. Yes, I do.

Q. Will you please read that?

(Testimony of Henry Eugene Berman.)

A. "5/3. American-Hawaiian—25 Medium Grade A Czechoslovakia Victory." Above is the order number, "922."

Q. Do you find an inspector's initials?

A. Yes, "G. C. R.".

Q. Who is that?

A. G. C. R., Gordon C. Reed.

Q. Mr. Berman, I am unable to show you at this time an egg grading certificate produced by the Government, covering the Phillipa, but I will ask you nevertheless to examine the record which you have there and which is CX-1 in evidence, and tell me if you find a record concerning a shipment to the Phillipa on or about May 3, 1944, and covering 65 cases of eggs?

A. The Phillipa was a Matson boat, and I did not take care of the Matson Navigation Company business.

Q. That was the boat you testified to yesterday?

A. That is one of them.

Q. Was that the boat where this particular invoice was identified by you as being in Mr. Goddard's handwriting?

A. That is one of them.

Q. I will show you Defendants' AV in evidence, purporting to be an egg grading certificate covering 50 cases of U. S. Grade A Medium eggs for the steamship Edmund Ross, and bearing date of May 5, 1944. I will ask you to examine that certificate. Have you examined that, Mr. Berman?

A. Yes, I have. [3310]

(Testimony of Henry Eugene Berman.)

Q. Do you find, Mr. Berman, in your record, which is Defendants' Exhibit CX-1 in evidence an entry covering a delivery of eggs to the steamship Edmund Ross on or about May 5, 1944?

A. Yes, I do.

Q. Will you please read the entry?

A. "5/5. Olympic—50 Medium Processed AA." Above that, "900 AA—Steamship Edmund Ross." Above that the order number, "R-70."

Q. Do you find a Department of Agriculture inspector's initials there? A. I do.

Q. What are they? A. "G. C. R."

Q. Whose initials are those?

A. Gordon C. Reed.

Q. I will show you Defendants' Exhibit AX in evidence, being an egg grading certificate of the United States Department of Agriculture, covering 40 cases of U. S. Grade AA Medium Eggs for the steamship William Coulter. I will ask you to examine that. Have you examined that?

A. Yes.

Q. Do you find in your book and in the pages thereof which are Defendants' Exhibit CX-1 in evidence an entry for a shipment of eggs to the Czechoslovakia Victory—not the Czechoslovakia Victory, but to the William A. Coulter on or about May 8, 1944?

Mr. Pratt: I object to that, to the reference in the question as a delivery of eggs.

Mr. Sullivan: I will reframe it.

Q. Do you find a record in your book, which is

(Testimony of Henry Eugene Berman.)

Defendants' [3311] CX-1 in evidence, the pages of it which are Defendants' CX-1 in evidence, pertaining to the William Coulter, on or about May 8, 1944?

A. Yes, I do.

Q. Will you read that?

A. "5-8 — Hammond — 40 Medium Processed AA." Above that, "500 AA William A. Coulter." Above that the order number, "1569."

Q. Do you find a Department of Agriculture inspector's initials? A. Yes.

Q. What are they? A. "G. C. R."

Q. Who is G. C. R.?

A. Gordon C. Reed.

Q. I am unable to show you at this time any exhibit which was produced by the Government, as an egg grading certificate for the steamship Francis Parker, but I will ask you, nevertheless, at this time if in your book and in Defendants' Exhibit CX-1 in evidence you find a record for a shipment of 45 cases of eggs to the Francis Parker?

Mr. Pratt: I again object to this——

Mr. Sullivan: It is not a shipment. I will reframe the question. I will withdraw the question.

Q. I will ask you if you find in your book, which is Defendants' Exhibit CX-1 in evidence, a record pertaining to 45 cases of eggs for the Francis Parker on or about May 9, 1944? A. I do.

Q. Will you read it?

A. "5/9. Alaska Packers—45 cases of Medium AA." Above that, "780 AA—S.S. Francis Parker." [3312] Above that the order number, "2906."

(Testimony of Henry Eugene Berman.)

Q. Do you find a Department of Agriculture inspector's initials there? A. "G. C. R."

Q. Whose initials are those?

A. Mr. Reed, again.

Q. I will show you Defendants' Exhibit AN in evidence, which is an egg grading certificate of the United States Department of Agriculture covering 15 cases of U. S. Grade AA Medium eggs for the steamship Cape Cumberland. I will ask you to examine that. Have you examined that?

A. Yes, I have.

Q. Do you find an entry in your book, Mr. Berman, with relation to eggs for the steamship Cape Cumberland on or about May 10, 1944?

A. No, I do not.

Q. Was the Cape Cumberland handled through your Department?

A. No. This Cape Cumberland was a Moore-McCormack Line boat, and was handled throrgh Nye & Nissen, Inc., not City Sales.

Q. That is another one of the boats that you explained yesterday that you had nothing to do with?

A. That's right. It didn't go through the City Sales Department.

Q. Mr. Berman, I am unable at this time to show you an exhibit produced by the Government as an egg grading certificate for the Cape Breton, nevertheless, I will ask you at this time to consult Defendants' CX-1 in evidence and tell us if you find a record for the Cape Breton on or about May 10, 1944, with relation to 45 cases of eggs.

(Testimony of Henry Eugene Berman.)

A. If the Cape Breton was [3313] another Matson boat I would have had nothing to do with it.

Q. That is another boat you explained to us about that you had nothing to do with?

A. That is one of the three.

Q. So we can have those three in mind, you do have them in mind now? A. Yes.

Q. Can you tell them to us again?

A. S. S. Phillipa, which was the property of the Matson Navigation Company, S. S. Cape Cumberland, which was a Moore-McCormack boat, and the Cape Breton, which was another Matson boat.

Q. I think I may have omitted one. I don't know whether I showed you Defendants' AO in evidence, but as a matter of precaution I will show it to you now, an egg grading certificate for the steamship Gilbert Hitchcock, issued by the United States Department of Agriculture, and covering 55 cases of U. S. Grade AA Medium Eggs. Please examine that. Have you examined that? A. Yes.

Q. Do you find in your record, Defendants' Exhibit CX-1 in evidence a record for eggs for the steamship Gilbert Hitchcock on or about May 1, 1944?

A. Yes, there is one in here for May 1st.

Q. Yes. Will you read that?

A. "5/1. Alaska Transportation—55 Medium Processed AA." Above that, "1500 AA Gilbert Hitchcock." Above that the order number, "HL."

Q. Do you find any initials of an Agriculture Department inspector there?

(Testimony of Henry Eugene Berman.)

A. Yes, Mr. Reed's initials in the usual [3314] manner, "G. C. R."

Q. I believe I asked you about the Cape Breton?

A. Yes, you did.

Q. I am unable at this time to show you an exhibit here produced by the Government as an egg grading certificate for the steamship Mission San Diego, but I will ask you to look in your record, which is Defendants' CX-1 in evidence, and ask you if you find an entry with relation to eggs for the steamship Mission San Diego on or about May 10, 1944?

A. No, I don't have any record in my book for the Mission San Diego.

Q. Is there any explanation that you can make as to why no record is in there, or no entry is in there?

A. I tried to remember back about these boats, and if my memory serves me correctly the Mission San Diego was an emergency order phoned in for a rush delivery by that company at that time.

Q. I remember from the invoice, and I note in my notes of the same, that that covered a shipment of 10 cases of eggs. Would that fact indicate anything to you?

A. Well, it might. Ten cases of eggs—a small order like that—are usually port feeding orders and small emergency orders that come in from time to time. However, I do have records of deliveries of that small a quantity in the book.

Q. I will show you Defendants' AW in evidence,

(Testimony of Henry Eugene Berman.)

Mr. Berman, which is an egg grading certificate of the United States Department of Agriculture, covering 50 cases of United States Grade A Medium eggs for the steamship—it says here "Herber Creel," but I am sure it refers to the Heber Creel from the manner in which it has been presented, and I will ask you to examine that. Have you examined that? A. Yes, I have.

Q. Will you refer to the pages of your book which are Defendants' CX-1 in evidence, please, and tell me if you find an entry with relation to eggs with reference to the steamship Heber Creel?

A. Yes, I do.

Q. That would be on or about May 12, 1944?

A. That initialling is right over the date, but it appears to be 5/12.

Q. Will you read the entry?

A. "5/12, Olympic—50 Medium Processed AA," and above, "1380—AA, Heber S. Creel," and above that the order number "142."

Q. Do you find any Department of Agriculture inspector's initials there? A. Yes. [3316]

Q. What ones? A. "G. C. R."

Q. And that stand for—— A. Mr. Reed.

Q. I will show you Defendant's Exhibit AP in evidence, Mr. Berman, being an egg grading certificate for 8 cases U. S. Grade AA, Medium eggs, for the steamship James Oliver. I will ask you to examine that? Have you examined that?

A. Yes, I have.

Q. Do you find an entry with relation to eggs

(Testimony of Henry Eugene Berman.)

for the steamship James Oliver on or about the 23rd of May, 1944? A. Yes, I do.

Q. Will you read that entry, please?

A. Alaska Transportation—I am sure it is 5/20—oh, I see, there is no date in front of it because there seems to be a group here under the heading of 5/23 that all went out on the same day. It is Alaska Transportation—8 Medium Processed AA, and above that, 120—and the SS. James Oliver, Order No. 126.

Mr. Pratt: Q. How many cases is that?

A. Eight.

Mr. Sullivan: Q. Do you find a Department of Agriculture inspector's initials there?

A. Yes.

Q. And whose are they? A. G.C.R.

Q. Now, Mr. Berman, I asked you some questions about that order yesterday with relation to its being a port order. Do you remember that testimony? A. Yes, I remember.

Q. Does this entry in the book which you have before you [3317] refresh your recollection with respect to this transaction at all?

A. Yes, it does.

Q. Will you just tell us what your recollection is of the transaction after having looked at that entry?

A. The order definitely was a port order, and filled in conformity with the request of the shipping company for that amount of merchandise in the usual course of business.

(Testimony of Henry Eugene Berman.)

Q. Was this an incident where a port order was actually inspected?

A. Oh, yes, our intention always was to have eggs for War Shipping inspected.

Mr. Sullivan: Will your Honor indulge us just a minute?

Q. Mr. Berman, I will hand this book back to you and ask you to find the entry for the John Muir again for me.

A. I have it here.

Q. Will you show it to me, please?

A. It is the fourth line from the top of the page.

Q. Now, I notice that this entry reads 4/24, Alaska Packers. What would the Alaska Packers denote there?

A. It denotes the people from whom I received the order, either the general agent or the agent for the general agent.

Q. Generally speaking, would that be the steamship company? A. Yes, it would be.

Q. Then I notice where it says "48 Med. Pros. AA". That would refer to what?

A. Medium Processed AA eggs. Mr. Sullivan, while reading these I read the words "Medium Processed" [3318] at that time. Actually in the book they are abbreviated.

Q. That is what I am getting at. Above the entry, Mr. Berman, of 48 Med. Proc. AA, I see 1,200—AA. What does that indicate?

(Testimony of Henry Eugene Berman.)

A. That denoted the quantity in pounds of butter and its corresponding grade.

Q. Then immediately to the right of the entry, 48 Med. Pros. AA I see 1,200—AA. What does that indicate?

A. That denoted the quantity in pounds of butter and its corresponding grade.

Q. Then immediately to the right of the entry, 48 Med. Pros. AA, I see SS. John Muir. That denotes what?

A. The name of the boat?

Q. And above the name SS. John Muir I see the figures 4008. What was that?

A. The shipping company's purchase order.

Q. Generally speaking, with respect to each of the sixteen or eighteen ships that I have asked you questions about with relation to this book, did you set up the eggs, the butter, the shipping company and the order in generally the same uniform way?

A. My method was uniform in that respect.

Mr. Sullivan: At this time, if the Court please, may we have your Honor's permission to pass to the ladies and gentlemen of the Jury all of the egg grading certificates which we have here for these particular ships, together with Mr. Berman's book? I think both of them together will give the [3319] Jury a picture.

The Court: Very well, pass them.

Mr. Sullivan: I will hand the ladies and gentlemen of the Jury first, in the order in which I examined the witness on them; the egg grading cer-

(Testimony of Henry Eugene Berman.)

tificates which we obtained from the Government here in connection with the purchase orders and introduced into evidence. Then I will hand the ladies and gentlemen the book turned to the first page where the entry John Muir appears on Page 8, Line 4, which is the first ship that Mr. Berman testified to.

The Court: Give that to the Jury there and pass that around the other way in the interest of time.

Mr. Sullivan: I thought, your Honor, if it would meet with your Honor's approval, if they could see both of these at the same time.

A Juror: Shall I keep these in order?

Mr. Sullivan: The lady has asked whether we want to keep those in order. May I tell the juror through your Honor it is not necessary as long as they see those at the same time?

The Court: The purpose of presenting those to the Jury is so they may examine them if they wish. There is no order about that at all.

(The documents referred to were thereupon passed among the jurors.)

Mr. Sullivan: Q. Mr. Berman, in connection with the [3320] deliveries which were made to the steamship John Muir, Cape Pillar, Josiah Royce, Cape Charles, Gilbert Hitchcock, Henry White, Czechoslovakia Victory, Edmund Ross, William A. Coulter, Francis Parker, Mission San Diego, Heber M. Creel, and James Oliver, did you ever subsequent to the date of the respective deliveries to those boats receive any complaints from the shipping companies

(Testimony of Henry Eugene Berman.)

concerning the quality or the weight of the merchandise in those respective orders?

A. I did not. The only incident that occurred in connection with those particular deliveries is the incident which we have discussed here in connection with the exchange on the Josiah Royce.

Q. Mr. Berman, do you remember when Mr. Oscar Nystrom left the employ of Nye & Nissen?

A. Yes, I do.

Q. Did you have a conversation with him shortly before or at any time before he left the employ of Nye & Nissen concerning his leaving?

A. As a matter of fact——

Q. Just answer that yes or no?

A. Yes, I do.

Q. Can you place the time as nearly as you can when you first talked to Mr. Nystrom about his leaving?

A. The conversation I had with Mr. Nystrom was early in April.

Q. Of 1944? A. That is right.

Q. Who were present at the time?

A. It took place on the floor of the plant, and many of the employees were in the immediate vicinity. However, the conversation was between Mr. Nystrom and myself. [3321]

Q. Will you just tell the ladies and gentlemen of the Jury what Mr. Nystrom said to you about leaving and what you said to him on that occasion?

A. On that occasion—the day before the conversation took place Mr. Nystrom informed me

(Testimony of Henry Eugene Berman.)

that the following morning he would not be in to work as he had some personal business to take care of. And I asked whether that meant he would not be in at all the following day. He said no, as soon as he finished this particular thing he had to take care of he would get into the plant and resume his duties. So that is exactly what happened. The following morning Mr. Nystrom did not come in. He came in some time in the afternoon, and when he came in in the afternoon he immediately came over to where I happened to be at the time and said, "Henry, I've got to leave."

I said, "What do you mean by leaving?"

He said, "I mean I have got to quit."

I said, "Oscar, you can't leave me cold like that before I can get anybody to replace you. You know how hard help is to get and how busy we are around here. What is the trouble?"

He said, "Well, I've got to get some money in a hurry and I can't make it here."

I said, "Well, what has happened?"

He said, "Well, I am in the clutches of the FBI and I've got to have $400 quickly to square up the beef."

I said, "What is the beef? What is the FBI after you for?" [3322]

He said, "Well, I played professional football under an assumed name and it has something to do with a tax matter".

So I suggested to Oscar at that time that possibly we could help him financially to take care of this

(Testimony of Henry Eugene Bermain.)

obligation and he could get off the hook, as I put it, at that time. Oh, incidentally, I asked him how he expected to raise the $400 as quickly as he claimed he had to have it. He said he had a friend at the waterfront that could get him a position where not only the pay was more lucrative, but there would be a lot of overtime thrown in, and that he would be able to make a hundred dollars or more a week. And then came the suggestion about helping him with a loan to tide him over this difficulty. He said, "Well, that seems to be all right. That would answer my problem."

I said, "Well, I will talk to Mr. Moncharsh and if it is okeh with him we will see if we can't help you".

Q. Is that all the conversation substantially at that time?

A. Yes, as far as the conversation goes, I think that is about all.

Q. Did you have any other conversation with him on this subject?

A. Well, yes, I think the following day after I had talked to Mr. Moncharsh and received his permission to grant him the loan, I told Oscar that it would be okeh, and that we would be able to help him financially, and how much actually would he need? By that time the amount had boiled down from $400 to [3222] $100. As he explained, he was able to raise a little money of his own and his father was going to help him. So we discussed a

(Testimony of Henry Eugene Berman)

loan of a hundred dollars with the understanding it would be paid back out of his earnings.

Q. Do you remember when he actually left the employ of Nye & Nissen?

A. Well, as to the day I don't remember when he actually left. I do remember the circumstances.

Q. And what were the circumstances?

A. The circumstances was that after receiving his pay check as of a Friday evening, as we were accustomed to pay our drivers, I went to the main office upstairs for some reason and the girl on the switchboard handed me a key to a truck, an ignition key, and she said, "Here's the key to Oscar's truck."

I said, "What are you doing with the key to Oscar's truck?"

She said, "Well, Oscar drove his truck into the garage and told me to give you the key and to tell you that he wasn't coming in any more, and that he didn't want to tell me himself".

Q. Did you ever see him after that other than in court here, do you remember?

A. Yes, I saw Oscar I think once.

Q. Within any short time after his actual departure did he ever contact you, give you any explanation that you remember?

A. I don't think that I ever had an actual explanation of why he left.

Mr. Sullivan: You may cross-examine, Mr. Pratt. [3324]

(Testimony of Henry Eugene Berman.)

Cross Examination

Mr. Pratt: Q. As a matter of fact, Mr. Berman, didn't you ask Nystrom to come back to work after he had left?

A. I may or may not have. I don't remember.

Q. Now, referring to these entries in this book that you have identified, those are entries indicating inspection of eggs, are they not?

A. Those entries, at the time they were made, indicated that the delivery had been made.

Q. Then the dates that you have placed in each of these entries indicate that the eggs which you described here were actually delivered, is that right?

A. That is it, exactly.

Q. And the entry of inspection was made for what purpose?

A. What do you mean by the entry of inspection?

Q. The entry on the book was made for what purpose?

A. It was made specifically for the use of the Department of Agriculture.

Q. But it indicated, as made by you, that the eggs described in each instance had actually been delivered on the waterfront? A. Yes, it did.

Q. And the entry was made after the delivery?

A. No, at the time of delivery.

Q. You mean that at the time the eggs were placed on the truck of your delivery man and he was handed the necessary delivery papers, delivery

(Testimony of Henry Eugene Berman.)

receipt, and so forth, that that was the time when you made this entry?

A. Yes, I copied that [3325] information from the invoices before the truck left our premises to the waterfront.

Q. So the entry made on this book is supposedly identical with the information contained on the invoice that went to the Government, is that right?

A. Yes sir, that is correct.

Q. So that if other merchandise than described in the invoice and described here was delivered on the boat, this record would show it, wouldn't it?

A. No, it would not.

Q. And in each instance, you say, the record here indicates the inspection of the eggs or other merchandise that were placed on the invoice, the description here is identical with the description on the invoice?

A. Yes, but you asked whether that entry indicated the inspection. That entry did not indicate the inspection.

Q. Oh, it did not have anything to do with the inspection? A. Not that entry, no sir.

Q. When you have an entry—for instance, take the Edmund Ross, for example, which I think was on May 5—will you point that out again? You can find it more readily than I can.

A. Yes, I think it is on page 9. Yes, it is on Line 6 or 7, I believe, on Page 9.

Q. And that entry, so far as the Ross is concerned, indicates that 50 cases of Medium Proe-

(Testimony of Henry Eugene Berman.)

essed AA eggs were put on the truck for the Edmund Ross, is that it?

A. That is clear, yes sir. [3325]

Q. At least that is what was invoiced to the Government? A. That is correct also.

The Court: The jurors may take a recess.

(Recess.) [3326-a]

The Court: Proceed.

Mr. Pratt: Q. Mr. Berman, I would like to get this straight, if I can. Now, do I understand that you put the entries in this book at the time the load went out?

A. Yes, just prior to when the load went out, when I still had the invoice in my possession.

Q. You had the invoice in your possession and you made these entries and then the load was put on the truck?

A. No, that is not the fact. The entry was made prior to the truck leaving the plant. It would have already been loaded but the invoice——

Q. Then you checked the load?

A. Did I check the load?

Q. Yes?

A. Yes, for the number of packages on the load.

Q. For the number of packages, and did you also check it to see that the cases of eggs that were on the truck had the Department of Agriculture stamp on them that indicated the inspection by the Department of Agriculture men?

A. No. That would be impossible, Mr. Pratt, as the stamps are on one end of the case and the

(Testimony of Henry Eugene Berman.)

only exterior cases showing would be the last tier and stamps might be on the end facing me or the inside which I wouldn't be able to see.

Q. The stamps were always on the ends of the cases? A. More often than not.

Q. That stamp also was affixed to one of your labels, was it [3327] not?

A. Not necessarily, no.

Q. Weren't your cases all labelled with the Nye & Nissen "Biddy" label? A. No.

Q. They were not?

A. Not all of them, no.

Q. If they were not so labelled, what was on the end of the case?

A. Possibly somebody else's label.

Q. Possibly somebody else's label?

A. It might have been.

Q. Did you put out cases of eggs with somebody else's label on the end?

A. It might have been.

Q. When did Mr. Reed make his entries in this book?

A. From day to day as he came into our plant.

Q. So the entry he made, for example, on this item showing the Edmund Ross on Page 9, he may have made it the same day or almost any time?

A. That's right.

Q. But the inspection made by Mr. Reed, the Department of Agriculture inspector, was in fact made prior to the date when you made your entry here? A. That is entirely possible.

(Testimony of Henry Eugene Berman.)

Q. Well, how long before?

A. Could have been any time up to twenty-one days before.

Q. Up to twenty-one days. Was it frequent that inspections were made as long as twenty-one days prior to the delivery of the merchandise?

A. I cannot say it was frequent.

Q. What was the practice?

A. The practice in War Shipping——

Q. I am talking in regard to the entries in this book. What [3328] was the practice as to how long prior to the entries which you made was the inspection actually made by the inspector?

A. That I wouldn't know.

Q. Now, you kept abreast of Mr. Reed's inspections, did you not?

A. Not entirely. I had very little to do with the actual inspection of the merchandise, Mr. Pratt.

Q. When he inspected eggs what did you tell him? A. I did not tell him anything.

Q. Did he know what the eggs were for, that is, the grade of eggs that were to be inspected, had he received advice from you as to what he might inspect and find as to grade and size?

A. No, Mr. Pratt. That was a part of the business with which I had very little to do. It was under somebody else's authority.

Q. Under whose authority?

A. Mr. Goddard more likely than not.

Q. Well, Mr. Goddard, more likely than not. Who else?

(Testimony of Henry Eugene Berman.)

A. Whoever happened to be on the floor helping Mr. Goddard at the time. He had help on the floor, warehouse help.

Q. What help did he have?

A. He had Charles Eby, other truck drivers. In other words, when Mr. Reed came into the plant to make an inspection, anybody there who had the information could have designated which particular eggs for him to look at. We did not predetermine the quality of the eggs for Mr. Reed. That was determined by his actual inspection. [3329]

Q. That was determined upon the inspection and the invoice corresponded to his inspection, did it not? A. Definitely so.

Q. Yes, of course. Now, in connection with the Edmund G. Ross, the entry that you have is that there were 50 cases of Medium Processed AA eggs for delivery to the Edmund G. Ross. Is that right?

A. Yes, 50 Medium Processed AA eggs.

Q. Now, I direct your attention to the inspection certificate of Mr. Reed, which is Exhibit AY. How do you find that he graded these eggs?

A. I can't answer how he graded the eggs.

Q. Doesn't that certificate show how he graded them?

A. I wouldn't say the exhibit necessarily shows how he graded them.

Q. I want to know what it shows?

A. That is different. The certificate shows the eggs were U. S. Grade A Medium.

Q. U. S. Grade A Medium?

(Testimony of Henry Eugene Berman.)

A. That is what the certificate says.

Q. And what you invoiced for—I will direct your attention to the invoice. I direct your attention to U. S. Exhibit 161. You billed the Government for what?

A. Billed the Government for 50 cases of eggs Processed AA. It doesn't say here the size.

Q. At what price per dozen?

Mr. Sullivan: Just a moment. Have you finished your [3330] answer, Mr. Berman?

The Witness: No. Mr. Pratt interjected.

Mr. Pratt: Very well. I am sorry.

The Witness: The invoice does not show the price but apparently from the price, which I imagine you were going to ask me, they were Mediums.

Mr. Pratt: Q. You invoiced the Government for 50 cases of AA Medium eggs?

A. That's right.

Q. The invoice shows that Mr. Reed graded them as Medium A eggs; is that right?

A. The certificate doesn't show that. The certificate merely says——

Q. It says U. S. Grade A——

Mr. Sullivan: Just a minute.

The Witness: That is what the certificate says.

Mr. Sullivan: Mr. Berman, just a moment. I ask your Honor to direct Mr. Pratt not to interrupt the witness. The witness started to say "The certificate says" and then Mr. Pratt interrupted him. Do you wish to complete your answer?

The Witness: I think I have answered that.

(Testimony of Henry Eugene Berman.)

Mr. Pratt: You have managed to complete your answer? A. Yes.

Q. And that is that the certificate shows that Mr. Reed graded these eggs as A Mediums, is that right?

A. I don't know who originally graded those eggs.

Q. The certificate has the name Gordon C. Reed?

A. That is correct.

Q. And the book which you hold in your hand has the initials of Gordon C. Reed?

A. Yes, that is correct, Mr. Reed is the man who took the information out of my book.

Q. And he graded these eggs as A Medium?

A. I don't know that he graded those eggs at all.

Q. What does this certificate mean?

A. The certificate means that Mr. Reed made out that certificate for the Edmund G. Ross and on which he says they were U. S. Grade A Mediums.

Q. So that, as a matter of fact, you invoiced the Government for AA eggs while the inspector graded the eggs as A?

A. I can't agree with you, no.

Q. Well, have you an explanation?

A. My explanation would clearly indicate that in transmitting the information either from my book or to his own book or later on from his book to whoever typed that certificate, which I imagine was done by somebody in Mr. Reed's office, a mistake was made.

(Testimony of Henry Eugene Berman.)

Q. You think a mistake was made by the typist who typed this certificate?

A. I did not say that.

Mr. Faulkner: He did not say that. The witness says the mistake could have been from miswriting into his own book, the inspector's book, or another book, and then misdictating to a stenographer.

Mr. Pratt: Are you testifying? I don't know whether Mr. Faulkner is testifying or not, but I would like to examine [3332] the witness without interruption.

Mr. Faulkner: But you must state the record accurately, not one-fifth or one-third or one-fourth of it.

Mr. Pratt: Q. Now, Mr. Berman, you invoiced these eggs as AA to the Government, is that right?

A. Yes.

Q. What was the difference in price at that time between AA eggs and A eggs?

A. I don't remember offhand.

Q. Approximately?

A. I would say two cents difference a dozen.

Q. Wasn't it four or five cents?

A. I am basing my recollection on the present prices at the present time, which would be two cents.

Q. You have no recollection of what it was in May, 1944, or April—this is dated May 5, 1944?

A. No, I can't say about that date.

Q. But if the eggs were in fact A eggs instead

(Testimony of Henry Eugene Berman.)

of AA eggs the Government was overcharged for the difference, is that right?

Mr. Sullivan: Just a minute. I will object to that on the ground the question assumes something not in evidence and that it is speculative and argumentative.

The Court: Read the question.

(The question was read by the reporter.)

The Court: Overruled.

Mr. Sullivan: Exception. [3333]

The Court: Answer the question.

The Witness: Would you repeat the question again, please?

(The question was reread by the reporter.)

Mr. Pratt: Q. Now, I direct——

The Court: Wait. Allow him to answer.

Mr. Pratt: Pardon me.

The Witness: A. If in effect that is what happened, the Government would have been overcharged for those particular eggs.

Mr. Pratt: Q. And 1500 dozen eggs at a difference of two cents a dozen would be thirty dollars?

A. That's right.

Q. Now, again I direct your attention to Mr. Reed's certificate, this Exhibit AV, in which he specified in the certificate the number of eggs in each case which he graded, the number of eggs of each of the various grades and I direct your attention to the percentage of Grade AA; what does he have there?

(Testimony of Henry Eugene Berman.)

A. On this certificate there is no; there are no Grade AA eggs shown.

Q. What percentage in the three cases does he show of Grade A eggs?

A. He shows a total average percentage of 89.6.

Q. Of A eggs? A. Yes.

Q. And no AA eggs?

A. On that certificate, that is correct. [3334]

Q. Now, to go back, Mr. Berman, you testified that you were first in the employ of a corporation called Coast Egg Products Corporation, is that it?

A. That is correct.

Q. When was that corporation organized?

Mr. Faulkner: If your Honor please, I ask the record be stricken out in respect to the amount of money that the Government would have lost under those circumstances. The OPA regulations introduced by the Government show that Medium eggs, AA and A, sell for the same price. That is your exhibit, Mr. Pratt. AA 39, A 39.

Mr. Pratt: My attention has been called to the fact that the price on this OPA schedule is the same for AA as A eggs.

Q. Now, Mr. Berman, I want to ask——

Mr. Faulkner: I have a motion for the Court to instruct the Jury to disregard any testimony elicited on cross-examination of this witness to the effect that Government would have been overcharged so many dollars by delivering A eggs if they were delivered instead of AA.

(Testimony of Henry Eugene Berman.)

Mr. Pratt: All right, I will be glad to withdraw the answer to that specific question and ask some more——

Mr. Faulkner: You will agree the Court may instruct the Jury to disregard it?

Mr. Pratt: Thats' right.

The Court: The Jury will disregard the price of these [3335] eggs, the testimony in relation to it.

Mr. Pratt: Q. Now, I want t call your attention to the OPA price in April and May, 1944, for both A eggs and AA eggs, Medium, which is 39 cents, according to Exhibit 173, 39 cents a dozen, and I direct your attention that you charged the Government 41 cents a dozen.

Mr. Faulkner: May I see the schedule?

The Witness: That is what the invoice says.

Mr. Faulkner: Just a minute.

The Court: The witness answered "That is what the invoice says".

Mr. Faulkner: Yes, your Honor, but the prices here are subject to additional charges for other items and you just looked at one part of it.

Mr. Pratt: I would like to read——

Mr. Faulkner: You offered it and we let that go in without an objection. You will remember it when subject to correction. You said as a fact the OPA price for Medium eggs was 39 cents. The OPA price for Medium eggs is not 39 cents on this.

(Testimony of Henry Eugene Berman.)

Mr. Pratt: The evidence shows that the price was 39 cents.

Mr. Faulkner: It does not. There isn't any word in this evidence that shows that. It shows it is 39 cents plus a cent for this and a cent for that and a cent for something else. I [3336] don't know how many items.

Mr. Pratt: Mr. Faulkner, he has answered that the price was 39 cents for both A eggs and AA eggs.

Q. That's right, but you add on other things. It says a cent additional for processing, there is one.

Mr. Pratt: Where is the other cent?

Mr. Faulkner: I only looked at it for a second, and you get something for inspection.

Mr. Pratt: No, you are mistaken.

Mr. Faulkner: I will read it.

Mr. Pratt: Whatever charge there is for inspection is paid by the Government, by the shipping company out of Government funds.

The Court. Proceed.

Mr. Pratt: There is no charge——

The Court: Proceed.

Mr. Pratt: ——on the invoice.

The Court: Proceed with this case.

Mr. Pratt: Q. Now, I asked a question, Mr. Berman, about the Coast Egg Products Company. Do you know when that corporation was organized? A. No, I don't.

(Testimony of Henry Eugene Berman.)

Q. When did you go into the employ of that company?

A. At first I worked for Nye & Nissen.

Q. When?

A. Oh, I think I went to work for Nye & Nissen about 1930 or '31. I don't remember the exact year. [3337]

Q. Then later you went into the employ of this other corporation?

A. Coast Egg Products Corporation.

Q. Coast Egg Products Corporation?

A. Yes.

Q. Who employed you in the first instance to work for Nye & Nissen?

A. Mr. Moncharsh was my employer.

Q. Then when your employment was changed, who changed it?

A. I think there was a change in the method of doing business at the firm of Nye & Nissen and I became an employee of the Coast Egg Products.

Q. Who employed you for the Coast Egg Products? A. Who employed me?

Q. Yes?

A. I think I automatically became an employee of the Coast Egg Products Corporation within the scope of my duties.

Q. Automatically, without any interposition?

A. I think that is the way it happened.

Q. You just went into the employ of the new corporation without any direction from anyone?

A. It was not a new corporation.

(Testimony of Henry Eugene Berman.)

Q. How old was the corporation at the time you went into its employ?

A. That I don't know.

Q. When you became associated with that corporation what was the position you occupied?

A. I was the sales manager for that corporation.

Q. Who was the president?

A. At the time I became associated [3338] with the Coast Egg Products Company first I don't know.

Q. When were you aware of the names of the officers of that corporation first?

A. I am still not aware of the ~~names of the officers~~ of that corporation at all times or at any time except in one instance.

Q. You became the president yourself, did you not?

A. That is the only instance that I know who the members of the corporation were, Mr. Pratt.

Q. When did you become president of that company?

A. I think a couple of years before its dissolution

Q. Who designated you as the president?

A. I imagine it would have been the board of directors.

Q. Who were the members of the board?

A. I don't know.

Q. You don't know? A. No.

Q. Did you ever attend a meeting of the board?

(Testimony of Henry Eugene Berman.)

A. I don't think I have.

Q. As president you were the presiding officer of the board of directors, were you not?

A. As a matter of fact, I guess I would have been.

Q. Well, were you?

A. I don't know if that was the duty of the president.

Q. During the time you were president was there ever a meeting of the board?

A. I don't know.

Q. Did you ever attend a meeting of the board during the time you were president?

A. I don't think I did. [3339]

Q. So there could have been no meeting unless you were there, could there?

A. I don't know.

Q. How many directors were there?

A. I don't know. [3339-a]

Q. Did you ever see the minutes, the corporate records of this concern?

A. I may have. I am not sure.

Q. Who told you you were president of that company?

A. I don't think I was ever informed officially.

Q. Who told you unofficially you were president?

A. If you will let me explain how I actually found out I will be glad to.

Q. Go ahead.

A. I was given some papers to sign.

(Testimony of Henry Eugene Berman.)

Q. Who gave them to you?

A. I think it was one of our auditors or accountants.

Q. Who? What is his name?

A. I don't remember now who it was.

Q. Who are your auditors or who were your auditors at that time?

A. I think at that time our auditors were Silverstone and Folkoff.

Q. When was this that you became president?

A. As fa ras I can remember I think it was in 1941.

Q. Didn't Mr. Moncharsh ever say anything to you about your becoming the president of this corporation? A. No, he did not.

Q. You never discussed it with him?

A. No, I did not.

Q. Now, your income previous to your going with this company came from Nye & Nissen, didn't it? A. Yes, it did.

Q. Then when you joined this company's force your pay came from the Coast Egg Products Company? A. Yes, it did. [3340]

Q. And how was it paid?

A. I was paid by check.

Q. By whose check?

A. I think the actual check bore the name of Nye & Nissen.

Q. Now, you said in direct examination that this corporation, Coast Egg Products Corporation, was a subsidiary of Nye & Nissen, is that right?

(Testimony of Henry Eugene Berman.)

A. I think that is what I said.

Q. And all the stock of the corporation was held by Nye & Nissen, wasn't it?

A. No. As a matter of fact, I know it was not.

Q. Who held other shares than those owned by Nye & Nissen?

Mr. Faulkner: If your Honor please, I do not want to make the objection it is not proper cross-examination, but I will inform the Court and Mr. Pratt that we will produce in evidence the accurate relation of those two companies, and I will state to Mr. Pratt that my information is that the arrangement of the company was that there were about two-thirds or three-quarters of the stock of the company owned by Nye & Nissen at certain stages and a small, twenty-five or eighteen percent by another, and that during part of the time the owners of the minority stock had an agreement with Nye & Nissen to divide whatever profits; we will have all that information exact with the man who is familiar with those details.

Mr. Pratt: It is with the understanding that we will have a record of who the stockholders were——

Mr. Faulkner: Mr. Pratt, we intend to produce in an [3341] accurate form the entire history of the company insofar as it is possible to reflect it in the record, and as briefly as possible, but it will show who the stockholders were, and if you want to know who the directors were, the officers, we will bring that and we will try to get the copy of the original contract of the division of profits, if

(Testimony of Henry Eugene Berman.)

it is available. And then if that is not enough we will bring whatever you like.

Mr. Pratt: With that assurance——

Mr. Faulkner: You want the information.

Mr. Pratt: That is right. With that assurance I won't pursue that part of this inquiry any further. I would like to know about how this corporation acquired the products which it sold.

Mr. Sullivan: During what time now, Mr. Pratt?

Mr. Pratt: Q. Will you answer that, Mr. Berman?

A. For the most part, from Nye & Nissen.

Q. From what other source did it secure its products?

A. At various times while I was in their employ we did make outside purchases.

Q. Of what? A. Eggs, cheese——

Q. And butter?

A. I hardly think we ever bought butter from any outside source.

Q. For the most part you secured your products of eggs and cheese that you sold from Nye & Nissen, is that right? [3342]

A. That is correct, sir.

Q. Who kept the books?

A. Bookkeeper.

Q. Was that the bookkeeper of Nye & Nissen?

A. No, at one time Coast Egg had a bookkeeper entirely their own.

Q. When was that?

A. That was when we were on Townsend Street.

(Testimony of Henry Eugene Berman.)

Q. During all of the time that the Coast Egg Products Company operated in the Townsend Street plant you had your own individual separate bookkeeper?

A. I believe so. I am trying to give you the information that you are asking me to the best of my knowledge, which is not entirely complete. I had very little to do with the office functions of the organization.

Q. You were just the president, is that right?

A. I was in fact a salesman, sir. The president was an honorary title which meant nothing to me.

Q. Did you have your own bank account?

A. I wouldn't know.

Q. Who signed the checks that were utilized in payment for products that you purchased?

A. I did not.

Q. When eggs or cheese were purchased from Nyes & Nissen, how was that relationship recorded on the books, do you know?

A. No; I do not.

Q. You had nothing to do with the bookkeeping or accounting? A. None whatsoever.

Q. You were just the president, is that right?

A. For a short period.

Q. How long? A. Maybe two years.

Q. That corporation dissolved, did it not?

A. Yes, it was dissolved.

Q. Dissolved at the end of 1943, was that it?

A. Yes, December 31, 1943.

Q. Who took over the assets?

(Testimony of Henry Eugene Berman.)

A. I do not know if there were any assets. Whatever there were were taken over by Nye & Nissen.

Q. And who paid the debts?

A. That would be also true.

Q. So that the debts were all liquidated, were they, before dissolution?

A. I don't know whether they were liquidated before dissolution or not, sir.

Q. Wasn't the concern insolvent when it liquidated? A. I am not sure of that.

Q. And wasn't it so recorded here in the proper official office in this city or county?

A. I would have no way of knowing those facts.

Q. You know nothing of that?

A. That is right.

Q. You were just the president?

A. That is right, if you want to put it that way.

Q. Did you ever have experience in candling eggs?

A. Very slightly. Only by observation.

Q. You were not an egg candler?

A. By no means.

Q. Before you went into the employ of Nye & Nissen what had [3344] been your previous employment?

A. I was employed by Lewis J. Cohen, a building contractor here in San Francisco, and I was also employed by the Federal Outfitting Company.

Q. It had nothing to do with eggs, cheese or butter in any instance, is that right?

(Testimony of Henry Eugene Berman.)

A. No sir.

Q. And the first experience you had then in connection with those products was when you went to work for Nye & Nissen, is that correct?

A. That is exactly correct.

Q. Now, I direct your attention to this photograph which you produced, which is Exhibit CI in evidence, this photograph which shows a large number of egg cases. Those are egg cases of various, numerous dealers, are they not?

A. As a matter of fact, Mr. Pratt, those are cases of eggs.

Q. Those are cases of eggs? A. Yes sir.

Q. But referring to the egg cases or crates, they are the cases or crates of many different dealers, are they not? A. That is true.

Q. Now, receiving eggs in miscellaneous cases of that sort was very usual and customary, wasn't it, during the period of 1944?

A. Even up to now, sir.

Q. Even up to now? A. Yes sir.

Q. And when you receive eggs you get them in all kinds of cases, is that right? A. Yes sir.

Q. After eggs are candled and classified by your concern then they are in other kinds of cases, are they not? [3345]

A. No sir, not necessarily.

Q. But when you ship them out ordinarily, customarily, you put a label on the end of the case, do you not?

A. Not in San Francisco.

(Testimony of Henry Eugene Berman.)

Q. Your own individual label, do you not?

A. Not in San Francisco.

Q. Not in San Francisco? A. No sir.

Q. So that during the period that you were selling these eggs, delivering these eggs to the War Shipping Administration, isn't it a fact that invariably or almost invariably you had your own labels on these cases?

A. In most instances that is correct.

Q. So that when cases of eggs were shipped to these various boats on the waterfront for the Government, the War Shipping Administration, the eggs almost always contained your label on the end there; that is right, isn't it?

A. Yes, at one time there was a request either from the Department of Agriculture or from the War Shipping Administration so that they might be able to identify eggs aboard the vessels for all purveyors to either have the label on them or place a stamp on the case so that they may be so identified.

Q. So that when eggs were delivered to the waterfront, to the War Shipping Administration, the cases did not look like this, did they, as shown in this photograph?

A. Not after a certain time. [3346]

Q. There are no cases in this picture in which your own label appears, is there?

A. I will have to look. No, there isn't a single instance.

Q. So far as egg cases for delivery to the water-

(Testimony of Henry Eugene Berman.)

front are concerned, this photograph is not a representation of such cases?

A. For what period?

Q. 1944, during April and May, for example?

A. For example, during April and May, that is correct.

Q. Now, in deliveries to the War Shipping Administration there was also a uniformity in cases, was there not?

A. There certainly was not.

Q. As to whether they were wooden cases or fiber cases? A. No, at no time.

Q. Now, I direct your attention to the evidence which undoubtedly you heard that related to the steamship William S. Clark. You recall the testimony of the various witnesses here, do you not?

A. Yes, I do.

Q. Do you recall that the witnesses testified that in January or early February of 1943 a shipment of eggs was received at Los Angeles from Minnesota?

A. I heard that testimony.

Q. And that these eggs, 105 cases, which were marked Lot 3737 and marked Medium, were in storage at the Terminal Refrigerating Company in Los Angeles; do you remember that?

A. I remember the testimony, yes sir.

Q. And do you remember the fact that the evidence of these [3347] witnesses, the testimony, showed that those 105 cases of eggs were shipped to

(Testimony of Henry Eugene Berman.)

San Francisco on the orders of Mr. Mopcharsh? Do you remember that?

A. Yes, I remember that also.

Q. Do you recall that two days after that shipment a certain number of cases, 45 cases, in the same cases or crates with this Lot No. 3737, were delivered on the William S. Clark at San Francisco? Do you recall that?

A. I recall that the testimony——

Mr. Faulkner: I object to this type of examination.

Mr. Faulkner: This is preliminary, if the Court please.

Mr. Faulkner: Just a moment. The witness has testified to no act or transaction on direct examination of any kind relating to the William S. Clark. It is, as I recall, a Matson boat. But at all events, the witness has given no testimony about the William Clark. Now Mr. Pratt is asking a series of questions which are merely a resume of his case.

Mr. Pratt: That is right. It is entirely preliminary.

Mr. Faulkner: It is improper cross-examination. In other words, the memory of the witness, whether he sat in court and remembered this testimony, your Honor, is immaterial. He may have forgotten it.

Mr. Pratt: If the Court please, this is a defendant in the case.

Mr. Faulkner: That is right.

(Testimony of Henry Eugene Berman.)

Mr. Pratt: And the latitude of cross-examination is very [3348] great.

Mr. Faulkner: Oh no, it is very limited. The law is that it is very limited. But I am not making the objection on that point. I am making the objection he never testified about the William Clark. We have the defendants here who handled the William Clark and they will testify about the William Clark.

Mr. Pratt: I want to ask him some questions about the practices that obtained in connection with the business of the company at that time, and this is merely preliminary.

Mr. Faulkner: You Honor, if he wants to ask that, that is all right. But the rest is not proper cross-examination.

The Court: He may answer directly about any practice during that period.

Mr. Pratt: I am sorry. I did not hear the Court's ruling.

(The reporter read the ruling.)

Mr. Pratt: Q. Mr. Berman, you knew of eggs being shipped in from outside points during that period, did you?

A. Our eggs came from some place, yes sir.

Q. Did you have anything to do with the purchase of eggs in quantities at outside points?

A. No sir.

Q. Who had that function in your company at either the beginning or end of 1943?

(Testimony of Henry Eugene Berman.)

A. That would be handled by Mr. Smith and Mr. Moncharsh.

Q. And purchases of eggs coming from Minnesota, for example, [3349] were frequently sent, were they not, to other points, rather than always to San Francisco?

A. Mr. Pratt, if I didn't actually see the eggs arrive in our plant from Minnesota I would not know whether they were shipped any place else or not.

Q. I am asking you about the custom that obtained at that time in securing eggs in quantity from outside points.

A. I only know what I saw.

Q. You are familiar with the way business was conducted in this company, are you not?

A. Downstairs. Not up in the main office.

Q. You knew nothing then of the purchases of eggs in quantity in Minnesota?

A. Yes, I did.

Q. And you know the custom that obtained as to the destination in the west of eggs purchased in Minnesota? A. No, I do not.

Q. Don't you know that sometimes they were sent direct to Los Angeles and other times they were sent here, perhaps also to Petaluma on occasion? A. Yes.

Q. You are familiar with the manner in which business was conducted so far as that is concerned, were you not?

A. Generally speaking, I would say so.

(Testimony of Henry Eugene Berman.)

Q. And were you familiar with the fact that when eggs were brought from a distance they were placed in storage until disposition otherwise was made of them?

A. That only depends on the time of the year, Mr. Pratt. [3350]

Q. What time of year controlled that situation?

A. The time of the year for the natural storage of eggs, which are the months from February up and through possibly as late as June—that is the months when production is heaviest and eggs are put away for the fall months when production is lightest.

Q. And eggs purchased then in January and February are ordinarily and customarily placed in storage, are they?

A. Not necessarily so. There are many eggs sold in January and February also.

Q. Those are the periods, along January and February, when the production of eggs is rather low, is it not? A. That is right.

Q. So that eggs are placed in storage during the season of the summer time when production is highest, isn't that right?

A. It might start as early as February.

Q. Is production high in February—January?

A. Production starts to increase in February.

Q. And when eggs are placed in storage are they processed ordinarily first?

A. It is better to put processed eggs in storage, yes sir.

(Testimony of Henry Eugene Berman.)

Q. And why? A. They hold up better.

Q. So that if eggs are to go into storage for a protracted period, the custom was to process them, to give them a coating of oil, is that right?

A. It was our custom to do so. [3351]

Q. Now, when these eggs were placed on the William S. Clark in October of 1943 did you have anything to do with the transaction?

Mr. Faulkner: We object to that as not proper cross-examination. What eggs? The witness has never testified that he knew a single thing about the William S. Clark.

The Court: Keep in mind the question.

(Question read.)

The Court: You may answer. The objection is overruled.

Mr. Faulkner: He said "these eggs." I thought he was trying to identify some eggs that he had been talking about.

The Court: Answer the question, please.

The Witness: A. I don't know anything about the William S. Clark.

Mr. Pratt: Q. You had no contact with that transaction? A. No sir.

Q. Did you know Mr. Gartenberg, who was the manager of the company down at Los Angeles?

A. I knew Mr. Gartenberg only after he became associated with Nye & Nissen.

Q. So far as Nystrom is concerned, who hired him? A. I did, sir.

Q. You personally hired him?

(Testimony of Henry Eugene Bermann)

A. Yes sir, I did.

Q. And he worked for you for how long?

A. Approximately six months.

Q. That is his employment was by what company?

A. He worked [3352] for Nye & Nissen, Inc.

Q. Now, what is the distinction between the City Sales and Nye & Nissen, Inc.?

A. City Sales is an integral part of Nye & Nissen, Inc.

Q. And was its affairs all kept separate in any way from those of Nye & Nissen, Inc.?

A. Yes, they were kept apart in some ways.

Q. As a matter of fact, when City Sales, of which you were the head, were you not?

A. I was the sales manager.

Q. You were the sales manager. When eggs or other products were sold by City Sales, they were obtained from Nye & Nissen, were they not?

A. For the most part.

Q. And when you obtained them from Nye & Nissen, did Nye & Nissen invoice City Sales for these products? A. Yes, they did.

Q. And then when the purchaser, the customer, was invoiced, in what name were they invoiced?

A. They were invoiced—my yellow copies, my handtags, I believe, read Nye & Nissen, City Sales. The typewritten invoices indicated Nye & Nissen, Inc.

Q. So when you purchased products, when you secured products—cheese, for example—from Nye &

(Testimony of Henry Eugene Berman.)

Nissen, your organization, City Sales, received an invoice from Nye & Nissen, as I understand it?

A. That is correct.

Q. And when it came to the purchasing of cheese, was that cheese weighed?

A. Not as a rule. [3353]

Q. Not as a rule? A. That is right.

Q. But was it invoiced by Nye & Nissen by weight? A. Definitely so.

Q. And did you check the weights in any way?

A. No sir, not as a rule.

A. And how were they checked by Nye & Nissen?

A. That I do not know.

Q. You are familiar, I am sure, with Cheddar cheese. You so testified. A. Yes, I am.

Q. Cheddar cheese comes in two forms, does it not?

A. It may come in many more different forms.

Q. You handled it in two forms, did you not?

A. Yes, we have been talking about it here in two forms.

Q. And those forms were first in round wheels, they were called, were they not?

A. Individually they are called Singles.

Q. Singles? A. Yes sir.

Q. But they are round?

A. Yes, they are.

Q. And aren't they sometimes referred to as wheels?

A. We do not ordinarily call them wheels.

(Testimony of Henry Eugene Berman.)

Q. You have heard that term applied to them, is that right?

A. Yes, I would understand the term when applied to Cheddar cheese.

Q. And you have testified that they came either in a single round wheel or two in a case, and those were called Twins, is [3354] that right?

A. That is right.

Q. Or three in a case, and they were called Trips or Triplets, is that right?

A. That is correct.

Q. And these individual wheels weighed how much?

A. Oh, there was a great variance in the individual weight of a Cheddar wheel.

Q. And what was that variance?

A. What it was or what it might have been, are two different things, Mr. Pratt.

Q. What was the variance according to your experience when you were handling that product in April and May of 1944?

A. I seen Cheddar wheels vary from twenty-three to thirty pounds.

The Court: It is now time to take a recess. The jurors may be excused.

(Thereupon a recess was taken until two o'clock p.m.) [3355]

Afternoon Session, March 22, 1946, 2:00 o'clock p.m.

Mr. Faulkner: Q. If your Honor please, I asked Mr. Pratt about putting a witness on out of order. We have a witness here who is an official court reporter and if it is agreeable with your Honor, I know it is with Mr. Pratt, we would like to call him now. He is Judge Traverso's official reporter.

The Court: Will he take long?

Mr. Faulkner: No.

The Court: Very well.

W. A. FOSTER

called on behalf of the Defendants; sworn.

The Clerk: Q. Will you state your name?

A. W. A. Foster.

Direct Examination

Mr. Faulkner: Q. Mr. Foster, will you state your name? A. W. A. Foster.

Q. What is your business or occupation, Mr. Foster?

A. A shorthand reporter, official reporter for the Superior Court.

Q. Were you an official reporter in the year 1944? A. I was.

Q. Do you recall an incident in the line of your official reporting relative to the taking of a deposition of a witness named Jaffel Brown?

A. I do. [3356]

(Testimony of W. A. Foster.)

Q. Do you recall in whose presence the deposition was taken?

A. It was taken in the courtroom of Department 16 of the Superior Court before Judge Goodell.

Q. On what date?

A. Taken on Thursday, May 18, 1944.

Q. Do you recall, Mr. Foster, whether Mr. Brown was a witness called by the defendant in the case or the plaintiff?

A. As I recall, he was called by the State of California, the plaintiff.

Q. Who represented the State of California on the taking of the deposition?

A. Mr. Hassler, a Deputy Attorney-General.

Q. What was the title of that case?

A. William J. Cecil, Director of Agriculture of the State of California vs. Nye & Nissen, Inc.

Q. On the 18th of May, 1944.

A. That's right.

Q. In connection with the taking of the deposition of Haffel Brown do you remember an incident wherein Mr. Brown was asked to draw on an egg the mold, mold on an agg?

A. I remember that he was asked to draw on a piece of paper furnished to him.

Q. Did he draw mold on an egg at the taking of that deposition? A. He did.

Q. Was it made a part of the deposition?

A. It was.

Q. Do you recall, Mr. Foster, whether during

(Testimony of W. A. Foster.)

the taking of that deposition the drawing was made by the witness Brown, whether [2357] it was a drawing of mold on eggs that were the subject matter of his testimony, namely, eggs on board a ship called the William S. Clark on a certain date in October, 1943?

Mr. Pratt: I object to this.

Mr. Faulkner: If the witness remembers.

Mr. Pratt: We have the record of what was said by the witness on the deposition.

Mr. Faulkner: That is right.

Mr. Pratt: That is the best evidence.

Mr. Faulkner: The best evidence is what——

The Court: Read the question.

(Question read.)

The Court: Sustained.

Mr. Faulkner: Exception, your Honor.

Q. Have you the original drawing in connection with that deposition? A. I have.

Q. May I see it, please?

A. It is the last page, next to the cover there in the back.

Q. Is this book you hand me the original deposition?

A. That is the original copy of that deposition.

Q. I show you a photostat of that and ask you if that is a photostatic reproduction of the exhibit?

A. Yes, it is.

Q. That was attached to that deposition. Mr. Foster, directing your attention——

Mr. Pratt: If the Court please, I make no ob-

(Testimony of W. A. Foster.)

jection to [3358] it. It may be offered and received in evidence if counsel wants it.

Mr. Faulkner: Thank you very much. Having in mind this is an official record of the Superior Court you have no objection to the photostat?

Mr. Pratt: No. We want the whole deposition in evidence along with the picture.

Mr. Faulkner: What you want—I will offer the picture.

Mr. Pratt: I object to the picture being separated.

The Court: The original is here. Let the original go in.

Mr. Faulkner: You don't offer it in evidence and object to it going into evidence.

The Court: The original?

Mr. Faulkner: You mean the original picture?

The Court: You wish that deposition in relation to it——

Mr. Faulkner: I have no objection to the original drawing going in, but I have a photostat and there is no objection to the photostat.

Mr. Pratt: Yes, that is true, I don't wish to object to the photostat, but it must be accompanied by the testimony, either the original testimony or a copy of the testimony.

Mr. Faulkner: Well, if your Honor please——

The Court: I suggest, since it is here, both the transcript and the original copy, that it be marked for the purpose [3359] of identification. You may proceed.

(Testimony of W. A. Foster.)

Mr. Faulkner: I was trying to avoid taking the Superior Court record, that is all.

The Court: The Superior Court record is here and it will be identified.

Mr. Faulkner: Yes, but we have a copy of the deposition and we have a copy——

The Court: But if the original is here, I was trying to let it go in.

Mr. Faulkner: All I offered in evidence, if the Court please, is the yellow paper there, a drawing made by Haffel Brown.

Q. In the upper lefthand corner there appears on here certain pencil handwriting. Whose handwriting is that?

A. That is Judge Goodell's handwriting.

Q. Underneath that handwriting there is the contour of an egg. Who drew the contour of that egg?

A. Judge Goodel drew the contour of the egg.

Q. On the outside of the contour of the egg there are certain zigzag marks. Who drew those zigzag marks on the outside of the egg?

A. The witness.

Q. What was his name?

A. Brown.

Mr. Faulkner: I offer the drawing in evidence.

The Court: Admitted and marked.

(The drawing was thereupon marked Defendants' Exhibit CY [3360] in evidence.)

Mr. Faulkner: I just offered the drawing in evidence.

(Testimony of W. A. Foster.)

Mr. Pratt: I object to the drawing alone unless the whole deposition is received in evidence.

The Court: Well, in due course I take it that will be—you can renew your offer at the proper time. He is limiting it now to this drawing. Confine yourselves to the drawing. Proceed.

Mr. Faulkner: Q. Mr. Foster, that is the original of the deposition that was taken down in shorthand by you and transcribed by you?

A. That is.

Q. Turn to Page 10, if you will, Mr. Foster. In the *court* of that deposition were these questions asked of the witness and did the witness give these answers——

Mr. Pratt: I object to this. This has been marked for identification and I object to its being read at this time. We admit that this witness accurately transcribes his stenographic notes and that the exhibit which is identified as what—is this the original?

Mr. Faulkner: The witness has the original.

Mr. Pratt: Well, it has not been marked for identification yet, only the picture, the drawing, has been marked in evidence, and I think the Court directed that the balance of the document be marked for identification.

The Court: It may. [3361]

The Clerk: For the Government?

Mr. Pratt: Government.

The Clerk: Government's Exhibit 176 for Identification.

(Testimony of W. A. Foster.)

(The deposition was marked U. S. Exhibit No. 176 for Identification.)

Mr. Pratt: It was my contention that the witness has accurately transcribed the deposition. I object to its being read at this time. The deposition itself is the best evidence entirely aside from any oral testimony of this witness.

Mr. Faulkner: The witness came into this Court named Brown. He testified that he did not draw mold on the eggs at the taking of this deposition representing the eggs that he observed on the William S. Clark; Now, he testified to many other things and your Honor will recall in relation to some other eggs certain testimony and in those instances he said he gave the testimony, so I am not impeaching Mr. Brown when he admitted that he testified before Judge Goodell in the manner that was read to him on the deposition.

Now, here is the deposition of fifty pages, forty-nine pages. I asked the witness, in the interest of time, who took the deposition, if it was not a fact that drawing was indicated by the witness as representing mold on eggs that were on the William S. Clark in this voyage. Counsel for the Government objected. Your Honor sustained the objection. Now I am going to read and ask the witness if the witness Brown did not give [3362] these answers to these questions so that there will then be no question about that drawing representing mold drawn on the contour of an egg representing mold on the eggs on the William S. Clark. I thought that I

(Testimony of W. A. Foster.)

had made that suggestion in the interest of time. The witness knows what the drawing represents. I am entitled, very respectfully, your Honor, to direct his attention to subject matter of the eggs before him. I feel that I am, and the Court ruled with the Government. Now I am complying with the implication that goes with that ruling, it may call for his opinion and conclusion, so I am going to ask him the particular questions that were asked, what answers were given. Then the record will be complete. Otherwise it means I will have to offer the entire deposition.

The Court: What is your objection to reading the deposition, whatever it may be?

Mr. Faulkner: You mean fifty pages?

The Court: Whatever portion of it you wish.

Mr. Faulkner: That is what I want to do.

The Court: Proceed.

Mr. Pratt: I would like to have Counsel indicate from the page of the deposition he is reading.

Mr. Faulkner: Yes. Page 10, Mr. Pratt. Mr. Hassler is asking the questions.

"Mr. Hassler: Q. Mr. Brown, did you attempt to wipe any of the eggs?

"A. Well, I can answer it this way [3363] if you will let me; if you want me to; A lot of them eggs that I handled on the other ships—not only ships, but anywheres I worked at, you understand—some of them, in order to keep the dirt or whatever may be hung on the shell, you will take a damp cloth and wipe it off to keep it from drop-

(Testimony of W. A. Foster.)

ping in there with the egg, of course. You know, some people are very finicky about their eating, and the cleaner you serve it the better it will be for you and all concerned. So, therefore, a lot of times I have wiped eggs a great deal.

"Q. On these particular eggs——

"A. Some of these, I did. They got so bad I just got all out of fix and didn't want anything further——

"Q. What I am getting at is this: You have described the eggs as having what you call a moldy appearance. I want to know, first of all, if you remember wiping off that moldy appearance.

"A. Yes.

"Q. Did you?

"A. The consequence would be that after I would wipe it off, you understand, to keep that little dirt from falling in the bowl where I crack it in——

"Mr. Hassler: I think I had better withdraw that question, your Honor.

"The Court: All right.

"Mr. Hassler: It is rather hypothetical. Apparently [3364] it wasn't wiped off, and I think I had better withdraw it, Mr. Brown.

"The Court: Yes.

"Mr. Hassler: I think at this time, your Honor, we had better submit for purpose of illustration as an exhibit, if Mr. Brown would care to, or would please illustrate as best he can——

"The Court: Q. Are you a pretty good artist, Mr. Brown? A. Artist?

(Testimony of W. A. Foster.)

"Q. Yes.

"Mr. Hassler: Q. Can you draw pictures?

"A. I never had no lessons in artist.

"The Court: You go to it, Mr. Hassler; there is an egg (handing paper to counsel).

"Mr. Hassler: Q. Now, Mr. Brown, this is an egg. A. O. K.

"Q. Can you, with a pencil, indicate on that egg something that looks like the eggs you have just described?

"A. Well, I can put this on here and when you crack an egg you look at it and you will find——

"Q. This is before it is cracked, Mr. Brown.

"The Court: No; he wants put on there as best you can the appearance of the bad eggs or the outside of the shell before they are cracked open.

"A. Well, all I could put on there—all I could say would be a little kind of fuzz. Some people calls it whiskers. It is more on the order of mold like, you understand.

"The Court: Before you come to that, I think you had better lay a further foundation as to whether the shells had anything on them—you know what I mean—besides whiskers.

"Mr. Hassler: Yes, your Honor.

"Q. Further describing that shell, Mr. Brown, I think if we would clarify that question on mold, was the mold which you describe—I don't know of any other way of asking this so I will take a chance on asking a leading question and you can object, Mr. Freed—The mold had a definite color, did it

(Testimony of W. A. Foster.)

not? If that were a white egg, would the mold be white?

"A. Well, it would be practically the same on either one, as far as I know.

"Q. Would it be the color of the egg; or would it have a color of its own?

"A. Kind of snowish color.

"Q. Snowy kind of color?

"A. Snowish kind of color.

"Q. In other words, on a white egg the mold would be a snowy color? A. Snowy color.

"Q. Snowy color egg."

"What I am trying——" [3366]

Mr. Pratt: You are now skipping something.

Mr. Faulkner: Well, I will read it all if you want.

Mr. Pratt: I want the record to show——

Mr. Faulkner: All right. I will read it all.

"Mr. Freed: Just a moment; I would like to have it made clear whether these questions are directed to the particular eggs observed by Mr. Brown, or whether they are intended merely to be hypothetical.

"Mr. Hassler: Well, they are hypothetical in a sense, but they are directed at the eggs that you observed on the ship, in other words. I don't think, Mr. Brown, we are talking about any particular egg.

"The Court: I don't think they ought to be hypothetical at all. I don't think you intend them to be. I think you are confusing your terms there.

(Testimony of W. A. Foster.)

I think that all he can describe are the eggs that he used on the ship.

"Mr. Hassler: That he observed, yes, and that he used.

"Q. What I am trying to get at, Mr. Brown, is this: You have described what you have called an inferior egg; you said that it had mold on it. If you were to look at that egg—and this, too, is hypothetical; but looking back on those eggs that you observed on the ship, did they have any particular or peculiar appearance; that is, peculiar in the sense of coloration? Do you know what I mean by coloration? A. Yes, color. [3367]

"Q. Was there a peculiar color to them?

"A. Well, the way I can answer that question is this way: As far as I know, when I find things like that—I go down there, if I walk down or send down in the box to get eggs and they come up that way, the boy will tell me. I will look at them right quick and will say, Number one, them eggs are terrible.'

"Mr. Freed: I will have to object to this——

"The Court: That is right. In this court the answers should be just confined to the question.

"The Witness: You don't want me to go into that?

"The Court: No, he will get around to that; he will cover that. He will ask you plenty of questions—maybe too many.

"Repeat that last question.

"Mr. Freed: May I interrupt again? As I un-

(Testimony of W. A. Foster.)

derstand it, there has been a question asked which is still unanswered, namely, whether Mr. Brown is a good artist, and whether he can draw an egg showing the appearance of the outside of the shell of those eggs which he observed, and he has a paper and pencil before him.

"Mr. Hassler: This is in elaboration on that. You further objected on the ground that we hadn't laid the proper foundation.

"The Court: No, it was my suggestion that you ask [3368] him about whether the shells had anything on them before he started to draw. Now you know what I have in mind?

"Mr. Hassler: Yes.

"The Court: I don't want to suggest——

"Mr. Hassler: Yes; I don't want to suggest; I don't want to put the words in Mr. Brown's mouth.

"Mr. Freed: I urge that it is an easy enough matter to ask Mr. Brown whether the shells of the eggs had anything on them.

"Mr. Hassler: That is what I am trying to do.

"The Court: He didn't want to ask that; it might be taken as leading.

"Mr. Hassler: That is in effect what I have been trying to ask as to color.

"Mr. Freed: That is a simple question.

"Mr. Hassler: He has already answered they had mold on them.

"Mr. Freed: Let him draw the mold, if he can. That is my position.

(Testimony of W. A. Foster.)

"Mr. Hassler: Q. All right, Mr. Brown, would you please draw on that representation of an egg, would you please draw on it something that looks like the mold on the eggs you observed?

"A. I don't know as I could draw it. All I could just say is when I opened this case of eggs, naturally I [3369] noticed right away this here kind of floss, which is mold, would be scattered something around like that on the egg (indicating).

"Q. Draw it heavily.

"A. Something like that.

"Q. Is that heavy?

"A. Yes; I assumed that there was something wrong, you understand, with that. That now is just supposed to be this little mold, as I call it.

"Mr. Freed: Do you want to look at it and see if this is all right?

"Mr. Hassler: I can see it, only I don't think it is heavy enough.

"Q. Would you make that a little heavier?

"A. Those eggs is always set down in a case something like that, three dozen to one of those little racks.

"Q. You are just drawing what you see on the top of the egg as you look down in the crate?

"A. Yes, that is the way it would look, you understand.

"Q. When you took the egg out of the crate, did you observe that fuzz or mold was all over the egg? A. No.

"Mr. Freed: Objected to because, if I recall cor-